IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 95 OF 2007

Mrs.T. Rathnam..... ....
Petitioner
V/s
Habib Husein Karmali Patel..... .....
Respondent.

Mr.D.S.Sawant i/by Mr.Rajendra Mishra, Adv. for the petitioner.

Mr.P.S.Dani, Adv. For the respondent.

CORAM: A.P. DESHPANDE, J.
17.4.2007

PC:

Under an agreement of leave and license dated 12.4.1962 the present petitioner/defendant was granted a lease in respect of plot bearing No.60 admeasuring 30' x 20'. After terminating the tenancy, the respondent/plaintiff instituted a suit for ejectment and possession against the petitioner by contending that as the lease was granted in respect of open plot of land the defendant is not entitled to claim protection under the Maharashtra Rent Control Act. It was also pleaded that on account of breach of conditions of lease in as much as the premises are sublet, the plaintiff asked for possession. Before the Trial Court so also the Appellate Court main issue was as to whether an open plot was leased out or did the plot had a construction erected thereon at the time of grant of lease. If plot is an open plot of land then the petitioner/defendant is not entitled to any protection. However if a structure was standing on the plot at the time of its lease then

protection is available under the Maharashtra Rent Control Act. Both the Courts below placing reliance on the evidence on record have reached the conclusion that the defendant had almost admitted in various documents the fact that it was an open plot of land. The Courts below have placed reliance on the leave and license agreement dated 12.4.62, advocate's notice sent by the plaintiff and more particularly the reply sent by the defendant's advocate dated 19.7.2000 admitting the fact that the defendant is tenant in respect of open plot. Further reliance is placed on an application moved by the defendant for fixation of standard rent application bearing No.240/SR/66 wherein the property has been categorically described as open piece of land. Even in para 3 of the reply sent by the advocate there is categorical admission about the premises being an open plot of land. The findings recorded by the Courts below are based on weighty evidence, that what was let out was an open plot of land and thus said findings do not call for any interference in exercise of writ jurisdiction.

2. An altogether new contention is raised by the learned counsel for the petitioner which was not raised before the Courts below and the same is to the effect that section 2 of the Maharashtra Rent Control Act, 1999 is a provision which makes Maharashtra Rent Control Act applicable to the premises or the houses let out in the area to which Bombay Rates of Hotel & Lodging Houses Rents (Control) Act, 1947 did apply. What is to be seen is that the Maharashtra Act has been made applicable to the premises or houses governed by the Bombay Act provided they satisfy the definition of premises under the Maharashtra Act. Section 7 sub-section 9 defines the

word “premises” so as to mean any building or part of building let or given on license separately (other than a farm building) including the gardens, grounds, garages, outhouses if any appurtenant to such building or part of the building. For interpreting section 2 of the Maharashtra Act the definition of the word “premises” given in that act will be applicable whereas the learned counsel for the petitioner has contended that for interpreting sub-section 2 of section 2 of the Maharashtra Act definition of premises as given under the Bombay Act need to be taken aid of. The said submission cannot be accepted. Hence there is no merit in this revision application and the same deserves to be summarily rejected. I proceed to reject the same summarily.

3. Time granted by the first Appellate Court to the petitioner for vacating the premises has expired. Petitioner is in occupation of the premises since the year 1962 and hence I deem it appropriate to grant further time to the petitioner to vacate the premises. Learned counsel for the respondent submits that time be extended for vacating premises in case the petitioner is willing to give a usual undertaking in this Court. I do not deem it appropriate to insist for filing of undertaking and I grant three months' time from today to the petitioner to vacate the premises and hand over peaceful possession of the premises in question to the landlord. However it is made clear that the petitioner shall not create any third party interest in the suit premises and/or part with possession.

17.4.07.